

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE OFFICE OF THE UNDER SECRETARY OF COMMERCE
FOR INTELLECTUAL PROPERTY AND DIRECTOR OF THE
UNITED STATES PATENT AND TRADEMARK OFFICE

CYBERSECURE IPS, LLC,
Petitioner,

v.

NETWORK INTEGRITY SYSTEMS, INC.,
Patent Owner.

IPR2025-01441
Patent 7,706,641 B2

Before JOHN A. SQUIRES, *Under Secretary of Commerce for Intellectual
Property and Director of the United States Patent and Trademark Office.*

DECISION
Denying Institution of *Inter Partes* Review

CyberSecure IPS, LLC (“Petitioner”) filed a Petition seeking *inter partes* review of claims 1–5 and 8–16 of U.S. Patent No. 7,706,641 B2 (“the ’641 patent”) assigned to Network Integrity Systems, Inc. (“Patent Owner”). See Paper 2 (“Pet.”). Patent Owner filed a Preliminary Response. See Paper 12. Although the current record demonstrates that there is a reasonable likelihood that Petitioner would prevail with respect to at least 1 of the challenged claims in the petition, exercising discretion to deny institution was appropriate in this proceeding. See Paper 17 (“Notice”), 2.

The ’641 patent relates to a method for monitoring optical fibers in a cable to detect movement, which may indicate an intrusion into the cable. See Ex. 1001, code (57). All of the challenged claims, including independent claims 1, 8, 9, 12, and 13, claim various methods “for detecting movement of optical fibers” and require detecting movement in one or more claim limitations. *Id.* at 6:27–10:36. The Petition includes five grounds, with four grounds challenging the independent claims using distinct combinations of six prior art references. See Pet. 1.

Petitioner’s third ground challenging claims 8 and 12 meets the reasonable likelihood threshold for institution, in part because it relies on a reference that expressly discloses detecting movement. See *id.* at 73–74. Petitioner’s remaining grounds, however, fail to meet the reasonable likelihood standard. Petitioner makes inherency arguments relying on expert testimony, but does not explain sufficiently how the prior art inherently discloses the detecting movement limitation. See *id.* at 7, 33, 59–60, 92–93; Ex. 1003 ¶ 59.

At most, the challenges to only two of the fourteen challenged claims meet the reasonable likelihood standard for institution. Under these

circumstances, institution of trial would not be an efficient use of Board resources. Factors such as the efficient administration of the Office, coupled with the ability of the Office to timely complete its work, by their nature, center broadly on the Office, the patent system, and the public interest and, thus, inform my exercise of discretion. *See, e.g., Chevron Oronite Co v. Infineum USA*, IPR2018-00923, Paper 9 at 10–11 (PTAB Nov. 7, 2018) (informative) (determining that instituting a trial was “not an efficient use of the Board’s time and resources” where only two of twenty challenged claims met the reasonable likelihood standard).

ORDER

Accordingly, it is:

ORDERED that, pursuant to 35 U.S.C. § 314, the Petition is denied and no *inter partes* review is instituted.

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Patent 7,706,641 B2

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